

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 JAMES PARSONS, INDIVIDUALLY AND
4 AS SPECIAL ADMINISTRATOR OF THE
ESTATE OF CAROLYN LEE PARSONS, *et*
al.,

5 Plaintiffs

6 v.

7 COLT'S MANUFACTURING COMPANY,
8 LLC, *et al.*,

9 Defendants

Case No.: 2:19-cv-01189-APG-EJY

**Order Certifying Questions to the Supreme
Court of Nevada**

10 I respectfully certify to the Supreme Court of Nevada the following two questions of law
11 that may be determinative of matters before me and as to which there is no clearly controlling
12 precedent in the decisions of the Supreme Court of Nevada or the Nevada Court of Appeals:

- 13 • Does a plaintiff asserting a wrongful death claim premised on allegations that firearms
14 manufacturers and dealers knowingly violated federal and state machine gun prohibitions
15 have “a cause of action against the manufacturer or distributor of any firearm . . . merely
16 because the firearm or ammunition was capable of causing serious injury, damage or
17 death, was discharged and proximately caused serious injury, damage or death[,]” under
18 Nevada Revised Statutes § 41.131?
- 19 • Does Nevada Revised Statutes § 41.131 allow a wrongful death claim premised on
20 allegations that firearms manufacturers and dealers knowingly violated federal and state
21 machine gun prohibitions because the statute is “declaratory and not in derogation of the
22 common law”?

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1 **I. BACKGROUND**

2 Carrie Parsons was killed in the October 1, 2017 mass shooting in Las Vegas. Her
3 parents, plaintiffs James Parsons and Ann-Marie Parsons, sue the manufacturers¹
4 (Manufacturers) and dealers² (Dealers) that made and sold the AR-15 rifles used in the shooting.

5 The Parsons filed suit in the Eighth Judicial District Court for Clark County, Nevada on
6 July 2, 2019, asserting claims for wrongful death, negligence per se, and negligent entrustment.
7 The defendants removed the case to the United States District Court for the District of Nevada.
8 The defendants moved to dismiss the Parsons’ complaint, arguing that their claims are barred by
9 the Protection of Lawful Commerce in Arms Act (PLCAA), Nevada Revised Statutes (NRS)
10 § 41.131, and common-law causation principles. I dismissed the Parsons’ negligent entrustment
11 and negligence per se claims without leave to amend because they failed to state a cognizable
12 claim under the PLCAA and Nevada common law. I denied the motion to dismiss the wrongful
13 death claim, concluding that as pleaded it was not barred by the PLCAA or common-law
14 causation principles. *Id.*

15 The defendants also argued that the Parsons’ wrongful death claim is barred by NRS
16 § 41.131, which states that “[n]o person has a cause of action against the manufacturer or
17 distributor of any firearm or ammunition merely because the firearm or ammunition was capable
18 of causing serious injury, damage or death, was discharged and proximately caused serious
19 injury, damage or death.” The statute further states that it is “declaratory and not in derogation
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22 ¹ Colt’s Manufacturing Company LLC, Colt Defense LLC, Daniel Defense Inc., Patriot
23 Ordnance Factory, FN America, Noveske Rifleworks LLC, Christensen Arms, Lewis Machine &
Tool Company, and LWRC International LLC.

² Discount Firearms and Ammo LLC, Sportsman’s Warehouse, and Guns and Guitars Inc.

1 of the common law” and includes an exception for actions based on production or design defects.

2 *Id.*

3 The defendants argue this statute bars the wrongful death claim because the Parsons do
4 not allege that the AR-15s used in the October 1 shooting were defective. The Parsons respond
5 that their suit falls outside of § 41.131’s reach because their central allegation is that the
6 defendants violated federal and Nevada law by manufacturing and selling illegal machine guns.
7 Thus, they contend, they are not suing the defendants “merely” because the firearms were
8 capable of causing—and caused—their daughter’s death.

9 The text and legislative history of § 41.131 are capable of multiple reasonable
10 interpretations. The statute was enacted in 1985, but Nevada courts have yet to interpret it. The
11 parties have not identified, and I have not found, a federal or state decision that has even cited it.
12 This case presents important public policy concerns that should be addressed by the Nevada
13 court. I am particularly concerned by the defendants’ concession in oral argument that under
14 their interpretation § 41.131 would immunize even a defendant that manufactured and sold
15 Tommy guns or M-16 rifles to civilians. The Supreme Court of Nevada should be allowed to
16 interpret § 41.131 on first impression. So I denied the defendants’ motion to dismiss on this
17 ground without prejudice to refiling it, and I certify the above questions to the Supreme Court of
18 Nevada.

19 **II. PARTIES’ NAMES AND DESIGNATION OF APPELLANT AND**
20 **RESPONDENTS**

21 Plaintiffs: James Parsons, individually and as Special Administrator of the Estate of Carolyn Lee
22 Parsons; Ann-Marie Parsons.

Defendants: Colt's Manufacturing Company LLC; Colt Defense LLC; Daniel Defense Inc.; Patriot Ordnance Factory; FN America; Noveske Rifleworks LLC; Christensen Arms; Lewis Machine & Tool Company; LWRC International LLC; Discount Firearms and Ammo LLC; DF&A Holdings, LLC; Maverick Investments, LP; Sportsman's Warehouse; Guns and Guitars Inc.

Because the defendants argue that § 41.131 mandates dismissal of this lawsuit, I designate the plaintiffs as the appellants.

III. NAMES AND ADDRESSES OF COUNSEL FOR THE PARTIES

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**IV. ANY OTHER MATTERS THE CERTIFYING COURT DEEMS RELEVANT TO
A DETERMINATION OF THE QUESTIONS CERTIFIED**

I defer to the Supreme Court of Nevada to decide whether it requires any other
information to answer the certified questions. I do not intend my framing of the questions to
limit the Supreme Court of Nevada's consideration of the issues.

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1 **V. CONCLUSION**

2 I THEREFORE ORDER the Clerk of Court to forward this Order under official seal to
3 the Supreme Court of the State of Nevada, 201 South Carson Street, Suite 201, Carson City,
4 Nevada 89701-4702.

5 DATED this 10th day of April, 2020.

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8 ANDREW P. GORDON
9 UNITED STATES DISTRICT JUDGE
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